

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1903.

No. 1338.

232

No. 12, SPECIAL CALENDAR.

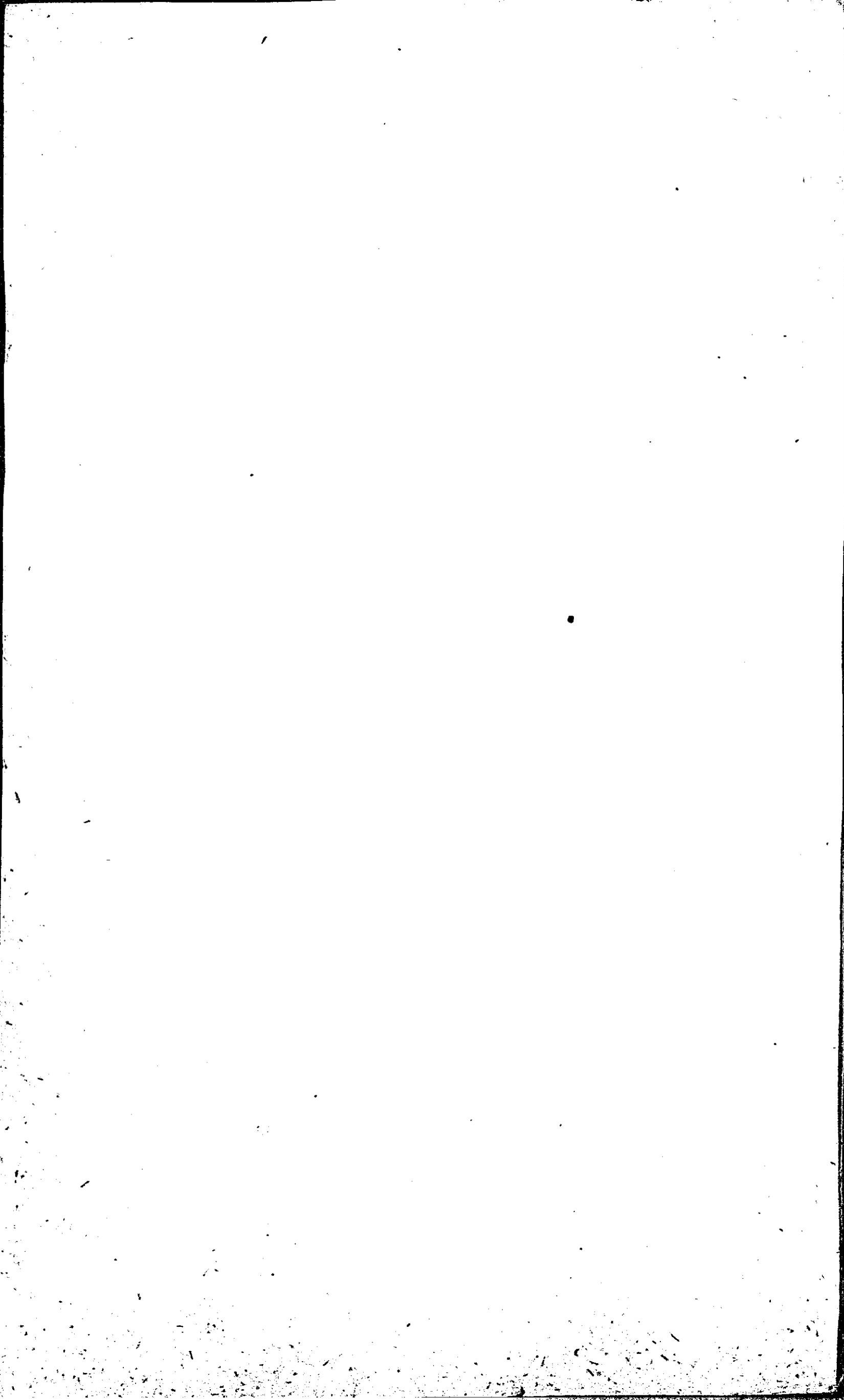
JAMES T. BRADFORD, APPELLANT

v.s.

ROBERT W. BROWN

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JUNE 18, 1903.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1903.

No. 1338.

No. 12, SPECIAL CALENDAR.

JAMES T. BRADFORD, APPELLANT,

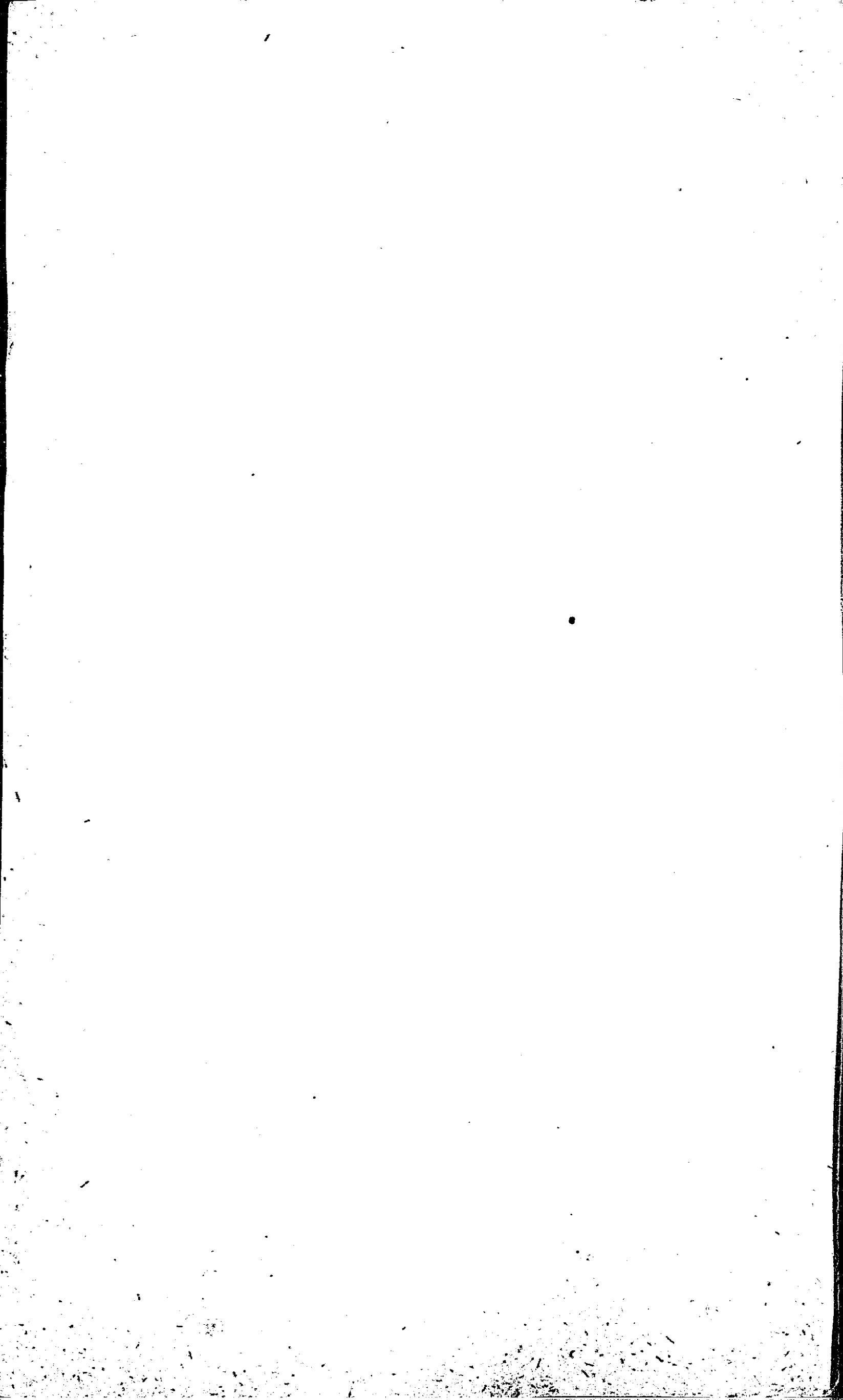
vs.

ROBERT W. BROWN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

JAMES T. BRADFORD, Appellant,
vs.
ROBERT W. BROWN. } No. 1338.

a Supreme Court of the District of Columbia.

ROBERT W. BROWN, Plaintiff,
vs.
LEONARD C. BAILEY, JOHN A. PIERRE, WIN- } No. 45978. At Law.
field S. Montgomery, James T. Bradford,
Defendants.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Petition for Writ of Certiorari.*

Filed February 3, 1903.

In the Supreme Court of the District of Columbia.

ROBERT W. BROWN
vs. } At Law. No. 45978.
LEONARD C. BAILEY ET AL. }

The petition of Leonard C. Bailey, John A. Pierre, and Winfield S. Montgomery.

1. That Robert W. Brown has instituted a suit before Samuel C. Mills, a justice of the peace for sub-district No. 2, in the District of Columbia, to recover against petitioners and James T. Bradford, who is a non-resident of the District of Columbia the sum of one hundred ninety-nine 63 / 100 dollars with interest from Jan. 27, 1902. The summons in said suit has been made returnable February 4, 1903, at 9.30 o'clock a. m. The title of said cause being Robert W. Brown vs. Leonard C. Bailey, et al. No. 1856.

2. Petitioners are not nor is either of them, in any wise indebted to the plaintiff, either individually or as a member of any co-partnership.

3. They elect to have a trial by jury of this case in this court.

4. They make this application not for any purpose of delay but solely because they have a good and meritorious defense to the whole of the plaintiff's alleged claim.

5. They are advised and so aver, that this court has concurrent jurisdiction with the said justice of the peace of the said cause, and that they are entitled to the writ of certiorari to bring the record in said cause to this court.

Petitioners therefore pray:—

1. That the writ of certiorari may issue to the said justice of the peace requiring him to forthwith transmit to this court the record in said cause in order that upon the coming in of said return, what to justice and right shall appertain may be done.

2. That such further order may be made in the premises as may be necessary.

LEONARD C. BAILEY.
JOHN A. PIERRE.
W. S. MONTGOMERY.

We do solemnly swear that we have read the foregoing petition by us subscribed and know the contents thereof that the facts therein stated upon our personal knowledge are true and that the facts therein stated upon information and belief we believe to be true. We further say that this application is not made for any purpose of delay but solely because we have a good and meritorious defense to the whole of the plaintiff's claim.

LEONARD C. BAILEY.
JOHN A. PIERRE.
W. S. MONTGOMERY.

Subscribed and sworn to before me this 3d day of February, 1903.

J. R. YOUNG, *Clerk,*
By W. E. WILLIAMS, *Ass't Clerk.*

Let the writ issue as prayed.

E. F. BINGHAM,
Chief Justice.

Bill of Particulars.

Filed February 6, 1903.

Leonard C. Bailey, James T. Bradford, Winfield S. Montgomery, and
John A. Pierre to Robert W. Brown, Dr.

To money deposited with defendants under the name of
Capital savings bank..... \$199.63

Interest thereon from January 27, 1902.

A. A. BIRNEY,
JOSEPH H. STEWART,
Attorneys for Pl'tff.

2-4-9.30.

$3\frac{1}{2}$

Return to a Writ of Certiorari.

Filed February 6, 1903.

In Justice's Court for the District of Columbia, Before Sam'l C. Mills,
a Justice of the Peace.

ROBERT W. BROWN, Plaintiff, } No. 1856. Action for
· vs. } Debt for \$199.63.
LEONARD C. BAILEY ET AL., Defendant. }

Proceedings.

Date.

Feb'y 2, 1903.—Summons and copys issued—returnable Feb'y 4th
1903 9.30 a. m.

" 3, " Summons returned summoned as to all of the
defendants except James T. Bradford which was not
found signed Aulick Palmer U. S. marshal by
Carlin S. Eskridge, deputy

When I received the annexed writ of certiorari, whereby the pro-
ceedings before me in said suit were stopped.

SAM'L C. MILLS, J. P. [SEAL.]

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, Sam'l C. Mills, one of the justices of the peace in and for said
county and District, by virtue of the annexed writ to me delivered,
do hereby certify the record and proceedings in the suit in the writ
mentioned unto the supreme court of the District of Columbia,
together with all things touching the same, as fully and wholly as
the same is now depending before me.

Given under my hand and seal this fifth day of February, A. D. 1903.

SAM'L C. MILLS, J. P. [SEAL.]

Costs paid by plaintiff, \$3.60
 Costs paid by defendant \$0.50
 Certiorari.

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Affidavits in Support of Attachment.

Filed February 6, 1903.

In the Supreme Court of the District of Columbia.

ROBERT W. BROWN, Plaintiff,
 vs.
 LEONARD C. BAILEY, JOHN A. PIERRE, WIN- } At Law. No. 45978.
 field S. Montgomery, James T. Bradford,
 Defendants. }

DISTRICT OF COLUMBIA, ss :

I, Robert W. Brown, on oath say that I am the plaintiff in the above entitled cause, in which Leonard C. Bailey, John A. Pierre, Winfield S. Montgomery and James T. Bradford are named as defendants. The grounds of my action are as follows:

Said Leonard C. Bailey, John A. Pierre, Winfield S. Montgomery and James T. Bradford and certain other persons were co-partners in the business of banking, under the name of Capital savings bank, and conducted a bank of deposit and discount at premises No. 609 "F" street, northwest, in the city of Washington, until November 24, 1902, when said bank failed and stopped business, and thereafter refused to pay its depositors. Each of said four persons named was a shareholder in said bank, which was an unincorporated association, doing business under articles of agreement among its members.

On January 27, 1902, I had on deposit with said copartners in their said bank two hundred dollars (\$200.00), which I allowed to remain there upon the agreement that the said firm would at the end of one year pay me interest thereon, from the date last mentioned, at the rate of six per centum (6 %) per annum. No part of said deposit, except the sum of thirty-seven cents (\$.37), and none of the interest promised has been paid. There is justly due me from said defendants, Leonard C. Bailey, John A. Pierre, Winfield S. Montgomery and James T. Bradford, on this account, the full amount claimed in the declaration (bill of particulars) that is to say, one hundred and ninety-nine dollars, sixty-three cents (\$199.63), with interest from the 27th day of January, 1902, at the rate of six per centum (6 %) per annum, exclusive of all set-offs and just grounds of defense.

I further say that said James T. Bradford is not a resident of the District of Columbia and resides in the State of Maryland, and has property and estate in the District of Columbia.

ROBERT W. BROWN.

Subscribed and sworn to before me this 6th day of February, 1903.

J. R. YOUNG, *Clerk,*
By W. E. WILLIAMS, *Ass't Clerk.*

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Filed February 6, 1903.

In the Supreme Court of the District of Columbia.

ROBERT W. BROWN, Plaintiff, }
vs. } At Law. No. 45978.
LEONARD C. BAILEY ET AL., Defendants. }

DISTRICT OF COLUMBIA, ss :

I, Samuel W. Rutherford, on oath say that I am familiar with the cause of action of Robert W. Brown against Leonard C. Bailey, John A. Pierre, Winfield S. Montgomery and James T. Bradford set out in the bill of particulars and the foregoing affidavit of Robert W. Brown. I know that said four persons last named conducted with others as co-partners, a bank of deposit and discount, under the name of Capital savings bank, until about November 24, 1902, when the bank failed. It soon thereafter passed into the hands of receivers appointed by the supreme court of the District of Columbia. I know that said Robert W. Brown was a depositor with said bank, and that, prior to January 27, 1902 he deposited with said bank two hundred dollars (\$200.00) as a time deposit to be repaid him at any time after one year, with interest at the rate of six per centum (6 %) per annum. Said money was not repaid him either in whole or in part, except as to thirty-seven cents (\$.37), and the said Robert W. Brown has a just right to recover on this cause of action from the said Leonard C. Bailey, John A. Pierre, Winfield S. Montgomery and James T. Bradford what he claims in his declaration (bill of particulars), that is, one hundred and ninety-nine dollars, 7 sixty-three cents (\$199.63), with interest from January 27, 1902, at six per centum (6 %) per annum.

I further say that James T. Bradford is not a resident of the District of Columbia and resides in the city of Baltimore, Maryland and has property and estate in the District of Columbia.

SAMUEL W. RUTHERFORD.

Subscribed and sworn to before me this 6th day of February 1903.

J. R. YOUNG, *Clerk,*
By W. E. WILLIAMS, *Ass't Clerk.*

Memorandum.

February 6, 1903.—Writ of attachment issued—returned by the marshal March 3, levied on certain real estate of defendant Bradford.

Motion to Quash Writ of Attachment, &c.

Filed February 9, 1903.

In the Supreme Court of the District of Columbia.

ROBERT W. BROWN }
vs. } At Law. No. 45978.
LEONARD C. BAILEY ET AL. }

Now comes the defendant, James T. Bradford, by his attorney,
John Ridout, appearing specially for the purposes of this
8 motion and not otherwise, and moves the court to quash the
writ of attachment issued herein against the said James T.
Bradford and the alleged levy thereunder and for grounds of this
motion says that this cause was commenced before Samuel C. Mills,
a justice of the peace in and for the District of Columbia.

That under the provisions of the Code (section 8) the said cause
was, as against certain of the defendants who had been served with
process, other than, and not including this defendant removed to
this court by writ of certiorari issued on the petition of said served
defendants on the ground of concurrent jurisdiction.

That said cause so far as it relates to said Bradford has never been
effectively removed to this court as said Bradford is advised.

That if the said cause has in the opinion of this court been so re-
moved as against said Bradford, it remains a proceeding before a
justice of the peace subject to all the limitations of the jurisdiction
of such justice.

That said justice of the peace was without authority to issue an
attachment on the ground of non-residence which could be levied
on real estate and that the issuance of said writ and its levy on real
estate of said Bradford was and is unauthorized and void. That the
bond given by the plaintiff in this cause is not such a bond as is re-
quired by law in this, that the said bond is made payable by its
terms to said Bradford only and is not made payable to all the
defendants.

JOHN RIDOUT,
*Att'y for said Bradford, Appearing Specially for the
Purposes of This Motion and Not Otherwise.*

Mr. Joseph H. Stewart, att'y for plaintiff:

9 Please take notice that the above motion will be submitted
before Mr. Chief Justice Bingham on Friday, February 13,

1903, at 10.00 o'clock a. m. or as soon thereafter as counsel can be heard.

JOHN RIDOUT,

*Att'y for James T. Bradford, Appearing Specially
as Above Stated and Not Otherwise.*

Supreme Court of the District of Columbia.

FRIDAY, May 15th, 1903.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, justice, presiding.

* * * * *

ROBERT W. BROWN, Petitioner, }
vs. } No. 45978. At Law.
LEONARD C. BAILEY ET AL., Defendant. }

Upon consideration of the motion filed herein Feb'y 9th, 1903, on behalf of James T. Bradford, by his attorney Mr. John Ridout, to quash the writ of attachment herein, it is ordered that said motion be, and it is hereby overruled.

10

Order Allowing Special Appeal.

Filed May 25, 1903.

Court of Appeals of the District of Columbia.

No. 156, Original Docket. April Term, 1903.

JAMES T. BRADFORD, Petitioner, }
vs. } Law. No. 45978.
ROBERT W. BROWN. }

On consideration of the petition of James T. Bradford, for the allowance of a special appeal from an order of the supreme court of the District of Columbia, overruling his motion to quash the writ of attachment, entered herein on the 15th day, of May A. D. 1903, it is now here ordered by the court, that said appeal be, and the same is hereby allowed.

By the court:

M. F. MORRIS,
SETH SHEPARD,
Associate Justices.

May 22, 1903.

A true copy,

Test:

[SEAL.]

ROBERT WILLETT, Clerk,
By H. W. HODGES,
Assistant Clerk.

11 In the Supreme Court of the District of Columbia.

ROBERT W. BROWN
vs.
 LEONARD C. BAILEY ET AL. } At Law. No. 45978.

The President of the United States to Robert W. Brown, Greeting :

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal allowed by the said Court of Appeals of the District of Columbia, on the 22d day of May, 1903, wherein James T. Bradford is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh,
 Seal Supreme Court chief justice of the supreme court of the District of Columbia, this 26th day of May in
 of the District of Columbia.
 Columbia. the year of our Lord one thousand nine hundred and three.

J. R. YOUNG, Clerk,
 By W. E. WILLIAMS, Ass't Clerk.

[Endorsed:] 9 No. 45978 Law. Robert W. Brown vs. James T. Bradford. Citation, Issued May 26th, 1903. Service of the within citation accepted this 27th May, 1903 A. A. Birney att'y for plff R. W. Brown John Ridout, attorney for appellant.

12

Memorandum.

May 28, 1903.—Appeal bond filed.

Order for Preparation of Transcript.

Filed May 28, 1903.

In the Supreme Court of the District of Columbia, the 28th Day of May, 1903.

ROB'T W. BROWN
vs.
 LEONARD C. BAILEY ET AL. } At Law. No. 45978.

The clerk of said court will include in transcript of record as follows:

1. Petition for certiorari.
2. Return thereto.
3. Affidavits in attachment.

4. Note—Writ of attachment—Return levied on certain real estate of def't Bradford.
5. Motion to quash.
6. Order thereon,
7. Appeal & citation & bond.

JNO. RIDOUT.

13 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, {
District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 12, inclusive, to be a true and correct transcript of the record as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 45,978, at law, wherein Robert W. Brown is plaintiff, and Leonard C. Bailey *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Seal Supreme Court of the District of Columbia. court, at the city of Washington, in said District, this 11th day of June, A. D. 1903.

JOHN R. YOUNG, Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1338. James T. Bradford, appellant, vs. Robert W. Brown. Court of Appeals, District of Columbia. Filed Jun- 18, 1903. Robert Willett, clerk.